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SUBJECT: Further Clarification in Crediting for, and Use of, Donated Foods in
Contracts with Food Service Management Companies

TO: Child Nutrition Programs
All States

The attached memorandum is Food Distribution Policy Memo FD-110, which clarifies requirements in crediting for, and use of, USDA donated foods in contracts with food service management companies (FSMCs), and provides guidance to ensure compliance with such requirements in the first and final years of such contracts.

Attachment

POLICY NO.: FD-110: National School Lunch Program (NSLP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP)

SUBJECT: Further Clarification in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies

The purpose of this policy memorandum is to clarify requirements in crediting for, and use of, USDA donated foods in contracts with food service management companies (FSMCs), and to provide guidance to ensure compliance with such requirements in the first and final years of such contracts. Although the policy applies to recipient agencies in the National School Lunch Program (NSLP), the Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP), this memorandum focuses on NSLP, as the vast majority of donated foods is provided in that program.

Crediting for the Value of Donated Foods and Single Inventory Management

In accordance with 7 CFR 250.51(a), the FSMC, in its contract with a school food authority (SFA), must credit the SFA for the value of all donated foods received for use in the SFA's meal service in a school year. The FSMC must provide such credit whether or not the donated foods are used in the year of receipt. Such requirement ensures that the SFA may continue to utilize single inventory management under its contract with the FSMC. In a single inventory management system, donated foods are stored and tracked together with purchased foods, rather than separately, which reduces the time and labor expended in inventory management.

The Final Contract Year

While the FSMC must credit the SFA for the value of all donated foods received for use in the SFA's meal service in a school year, it may not always be able to use such foods in the year of receipt. This may occur, for example, when donated foods are not received until late in the school year. Consequently, an FSMC in the final year of the contract may not be able to use such foods before termination of the contract. As indicated in Policy Memorandum FD-080 (Q29), the SFA may not return credit for the value of the unused donated foods to the FSMC, as such return of credit would not be compatible with single inventory management. It would also make it more difficult for the SFA to document its receipt of credit for the value of donated foods from year to year. However, the options included in the following paragraphs should help to avoid such a problem occurring in the final contract year.

SFA and FSMC Coordination in Ordering Donated Foods

In accordance with 7 CFR 250.50(d), the FSMC may order or select donated foods, in coordination with the SFA, and in accordance with requirements in 7 CFR 250.58(a). Such coordination in ordering would help to ensure that only those donated foods that can be effectively utilized in the food service are ordered, and that such foods are ordered as early in the school year as possible, in order to ensure their use before the end of the year. Therefore, we encourage SFAs to involve FSMCs as much as possible in ordering donated foods.

Use of Commercial Substitutes in Management of the Food Service

In accordance with 7 CFR 250.51(d), the FSMC may, in most cases, use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality in place of donated foods. Exceptions are donated ground beef, donated ground pork, and all processed end products (i.e., containing donated foods), which may not be replaced with commercial substitutes. The “substitution option” applicable to most donated foods may permit an FSMC to ensure their use, or the use of acceptable commercial substitutes, during the same school year in which the donated foods must be credited. For example, if donated canned corn will not be received until late in the school year, the FSMC may use an acceptable commercial substitute before receipt of the donated corn; then, when the donated corn is received later in the year, the FSMC may, at the discretion of the SFA, retain such food when the contract terminates. However, the SFA must ensure that such substitution has been made, and that it has received credit for the value of all donated foods received, in accordance with review requirements in 7 CFR 250.54(c).

The First Contract Year

In the first year of the contract, the FSMC must credit the SFA for the value of donated foods received in that year. In accordance with Policy Memorandum FD-080 (Q28), such credit must include donated foods in inventory carried over from the previous year, if the value of such foods has not already accrued to the school food service. This should be applicable only if the SFA was self-operating in the previous year, since an FSMC managing the food service in the previous year would have already provided a credit to the SFA for the value of such donated foods (and, as indicated above, would not have received a return of credit for unused donated foods at termination of the contract). However, under single inventory management, it would be difficult for a previously self-operating SFA to distinguish between donated foods and purchased foods in its carry-over inventory. Consequently, it is important for such an SFA to include the payment or credit required of the FSMC for all carry-over inventory (i.e., donated and purchased foods together) in its procurement or solicitation of the FSMC. In determining such payment or credit, the SFA may use the fair market value of foods in its carry-over inventory, or may use another means of valuing such foods.

Conclusion

It is important for the SFA to identify at an early stage the procedures or activities that will be necessary to ensure compliance with requirements for crediting for, and use of donated foods in contracts with FSMCs, and to work in close coordination with the FSMC, as feasible, in the performance of such procedures or activities. By such means, the SFA may help to ensure that donated foods may be used most effectively and efficiently in the school food service.